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Supreme Court, U. S.
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In The

Supreme Court Of The United States

October Term 1973

George O. Parker, Petitioner

vs

The State Of Louisiana, Et Al,

Respondents

Petition For Writ Of Certiorari To Review The Judgments Rendered By The Nineteenth Judicial District Court For The Parish Of East Baton Rouge, The First Circuit Court Of Appeal And The Louisiana Supreme Court.

Respectfully Submitted By
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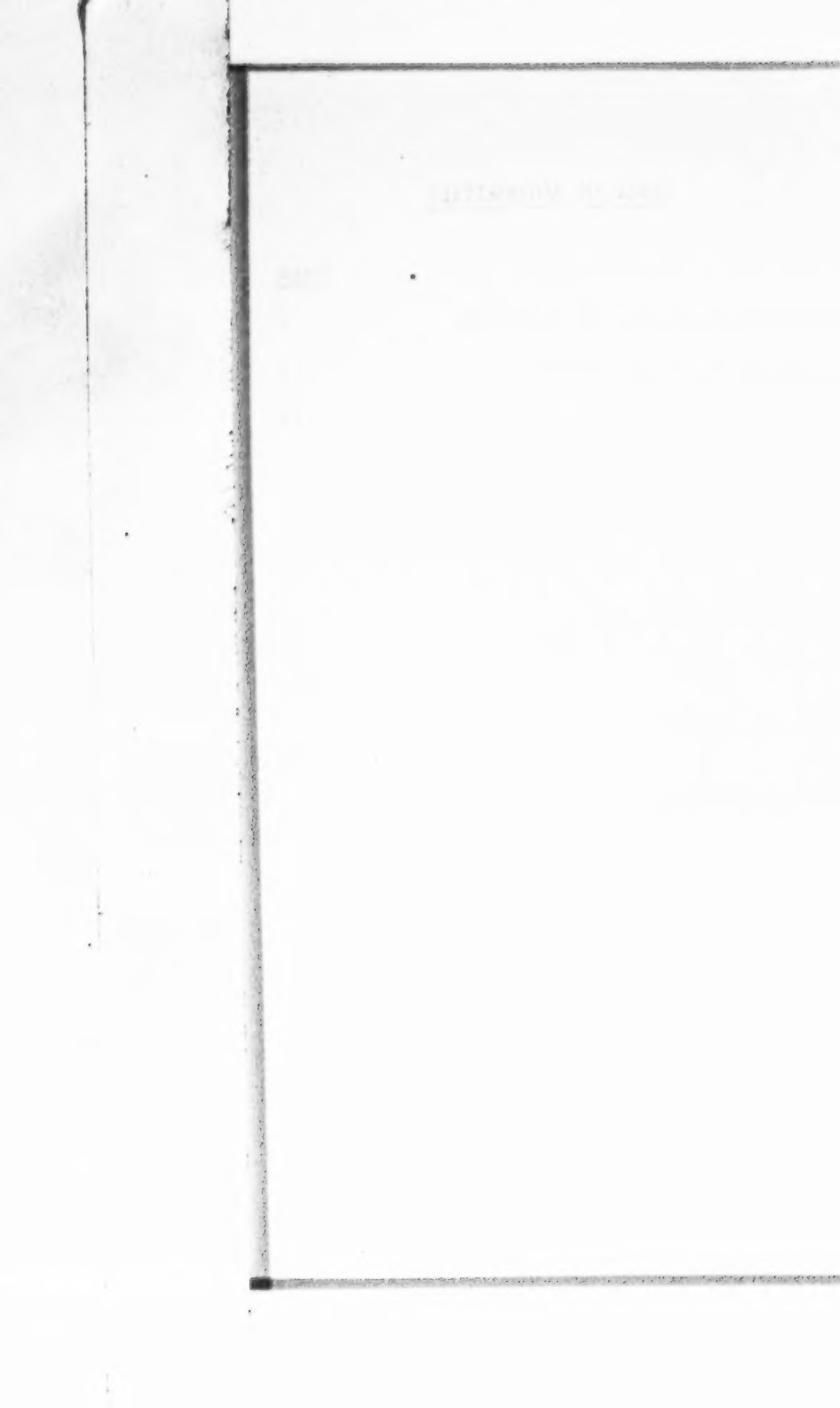

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In The

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George O. Parker, Petitioner

vs

The State Of Louisiana, Et Al

Respondents

George O. Parker hereby petitions this Honorable Court for a Writ Of Certiorari to review the Judgment On Rehearing rendered by the Louisiana Supreme Court on Monday, August 20, 1973 wherein said court affirmed by a four to three majority the adverse decisions previously rendered by the Louisiana Supreme Court, the First Circuit Court Of Appeal and the Nineteenth Judicial District Court for the Parish Of East Baton Rouge (See 261 Southern Reporter 2d 364 and 230).

Grounds Upon Which Jurisdiction Is Based

Jurisdiction is invoked under 28 USCA Section 1257 (2 & 3) and 28 USCA Supreme Court Rules Part V, Rule 19.

Questions Presented For Review

a) Special issues of national scope and importance which apply to every individual confined to any federal, state, county and municipal prison, jail, house of detention and/or penitentary throughout the United States.

b) An issue in which various Louisiana courts decided a federal question of substance not heretofore determined by this court and rendered said decisions in a manner that probably is not in accord with the applicable decisions rendered by this court as well as other courts throughout the federal judiciary system.

c) Louisiana Trial, Appellate and Supreme Court decisions which improperly applied and interpreted existing state laws and judicial precedents which imposed both absolute responsibility as well as liability upon the defendants for whatever happened to plaintiff while they were responsible for his custody, discipline, welfare and safety.

d) Louisiana Trial, Appellate and Supreme Court decisions which failed to recognize and/or comprehend the significant importance of applying U. S. Constitutional provisions and principles to the various issues that had been presented to the courts for determination.

e) Constitution of the United States, Amendments, Article V.

f) Constitution of the United States, Amendments, Article VIII.

g) Constitution of the United States, Amendments, Article XIV.

A Concise Statement Of The Case

On or about September 15, 1969, plaintiff George O. Parker - a negro - was an inmate confined to the downstairs, medium security section of Camp "H" Louisiana State Penitentary at Angola, Louisiana. At approximately 4:45 A.M. on the aforementioned date, plaintiff was cruelly, viciously and brutally stabbed three times in the area of his body between the abdomen and the neck by another negro prison inmate named Willie Edmonson. At the time of the stabbing incident, plaintiff was in his bunk asleep (this is a stipulated fact); he was totally unaware that he would be stabbed; he was completely and utterly defenseless; he was absolutely helpless and at the mercy of his assailant; he did not provoke the stabbing incident in any way whatsoever; he was not contributorily negligent and, most of all, the defendants collectively failed to provide him with whatever degree of care necessary for his overall welfare and safety.

As a direct result of being stabbed by inmate Willie Edmonson, plaintiff was removed from the penitentary to the prisoner section of Earl K. Long

Plaintiff/Appellant as submitted to the Louisiana First Circuit Court Of Appeal. The same constitutional issues were also presented to the Louisiana Supreme Court in plaintiff's Application For Writs Of Certiorari, in his original brief submitted to the Louisiana Supreme Court as well as his Application For Rehearing. None of the three Louisiana Courts (District, Appellate and/or Supreme) commented upon, evaluated and/or judicially determined the applicability of the constitutional provisions that had been presented to the various courts for determination.

Argument

The basic facts of the case presented to the trial court judge for determination were as follows:

1) The plaintiff - a penitentary inmate - was stabbed while in his bunk asleep by another penitentary inmate named Willie Edmonson.

2) He (plaintiff) was not contributorily negligent and he did not provoke the stabbing incident.

3) He was stabbed while entrusted to the defendants who were responsible for his day-to-day existence.

4) The defendants denied all forms of liability and they asserted that they were not absolutely responsible for whatever happened to him while he was entrusted unto their care.

The issued presented to the trial court for judicial determination were somewhat more complex. They were basically as follows:

1) Were the defendants individually, severally and insolido liable unto plaintiff for the injuries he sustained while confined to the penitentary and while entrusted unto them for his day-to-day existence?

2) Did the officials of Louisiana State Penitentary at Angola, Louisiana, the Louisiana Department Of Corrections as well as the State Of Louisiana have an absolute responsibility to provide plaintiff with whatever degree of safety was necessary for his personal protection?

3) Were the defendants absolutely liable unto plaintiff for the injuries he sustained while confined to Angola Penitentary even though the Louisiana Legislature allegedly failed to provide adequate funds with which to properly administer said penitentary?

4) Were the officials of Louisiana State Penitentary, the Louisiana Department of Corrections and the State of Louisiana bound to protect plaintiff in accordance with the St. Julian precedent (St. Julian vs State, 98 Southern Reporter 2d 284 - 1957)?

5) Did Louisiana Revised Statutes 15:839 through 15:876 more particularly 15:853 impose absolute responsibility and/or liability unto prison officials, the Louisiana Department Of Corrections

and the State Of Louisiana for plaintiff's overall custody, discipline, welfare and safety?

6) Did the defendants individually, severally and insolido violate any of plaintiff's constitutional rights guaranteed to him by the V, VIII and XIV amendments of the U. S. Constitution by allowing him to be stabbed while incarcerated?

Upon completion of the trial in the district court, the trial court judge in his written reasons for judgment rendered on June 30, 1971 (see appendix A) concluded as follows:

Page 3 - "From the testimony received in court along with the depositions which were filed in evidence the court must conclude that the plaintiff has failed to show knowledge, actual or constructive on the part of prison officials that he was about to be seriously injured by Edmonson. As the court appreciated the evidence, it felt that the prison officials were entitled to conclude that Parker and Edmonson were engaged in some sort of lover's quarrel and that neither inmate was in imminent danger from the other."

Page 4 - "The court must conclude that there was not sufficient evidence presented to the court that prison officials knew or should have known that Parker was to be stabbed by Edmonson. Accordingly, plaintiff's demand must fall and his suit is dismissed at his cost."

Obviously, the district court concluded that plaintiff failed to overcome the burden of proof imposed upon him by Louisiana law as well as the St. Julian precedent. However, this court did not comment upon the applicability of La.R.S. 15:853, plaintiff's right to adequate safety for his day-to-day existence as well as his civil and constitutional rights.

The same issues presented to the trial court were argued before the Louisiana First Circuit Court Of Appeal which, on March 13, 1972 and by a divided two to one majority (see appendix B), affirmed the judgment of the district court. The crux of said majority opinion is as follows:

Page 4 - "Crucial to a determination of the case at bar is whether the prison officials had good reason to anticipate the injury to Parker, and if they should have anticipated such, were they negligent in failing to prevent it. From the stipulations of fact alone, we can easily conclude that Parker had good reason to be afraid of Willie Edmonson. Edmonson has compiled a record while in Angola which reasonably demonstrates that he is a dangerous person who is a menace not only to society at large, but to those immediately around him. Stabings and other acts of violence seem to be commonplace with him. Yet, Associate Warden Hayden Dees testified that he (Edmonson) was no worse than many other inmates at Camp H and that worse prisoners than he were confined there in medium security."

Page 6 - "However, it is important to distinguish a knowledge on the part of prison officials of Parker's fear of Edmonson from a knowledge on their part, grounded upon reliable facts, that injuries will be inflicted of that there is good reason to anticipate the infliction of injuries. While the former has been established in this case, only the latter is an indispensable element of plaintiff's case which must be established by a preponderance of the evidence before he can recover. The expression of fear must be viewed in the atmosphere in which they were presented before they can be used as a basis of knowledge that harm was imminent."

Page 7 - "The trial court found that plaintiff failed to show knowledge, actual or constructive, on the part of prison officials that he was about to be seriously injured by Edmonson. We concur. Certainly, the trial court has not committed manifest error."

In this portion of their opinion, the majority concluded that Parker had good reason to be afraid of Edmonson; that Edmonson was a dangerous person who was a menace not only to society at large but to those immediately around him; that he was no worse than any other prisoner at Camp H; that stabbings were commonplace with Edmonson; that prison officials had been forewarned that the stabbing incident would occur. However, this actual knowledge of Edmonson's condition and the fact that he would stab plaintiff was insufficient evidence to hold the defendants liable because the expression of fear must be viewed

in the atmosphere in which it was presented before it can be used as a basis of knowledge that harm was imminent. From this analogy, it is quite obvious that all of the assertions made by plaintiff at the trial court are true but he could not recover because these conditions were commonplace to Louisiana State Penitentary at Angola, Louisiana.

The majority opinion further concluded as follows:

Page 5 - "We are also cognizant of the prevalence of weapons among the inmates. Homemade knives and clubs seemingly abound and are constantly being manufactured by prisoners. Constant inspections or "shakedowns" are performed by prison officials but, by their own testimony, do little good. The record reflects that this is a problem common to all penal institutions."

Page 6 - "Prisoners afflicted with homosexual tendencies are a constant cource of difficulty for prison officials."

Page 9 - "The net effect, of course, is that protective physical facilities are grossly inadequate to even begin taking care of the numbers of prisoners involved."

Pages 10 & 11 - "ADmittedly, there was at the time of this incident inadequate personnel and physical facilities with which to afford inmates of Angola the protection to which they were ideally entitled. The record is more than sufficient to establish that fact. No attempt was made to deny it by anyone

constructive knowledge that he was likely to be injured by another inmate as required by St. Julian v State, 98 So. 2d 284 (La.App. 1st cir. 1957). The majority acknowledges that from the stipulations alone the dangerous propensities of Edmonson were well known and plaintiff had good reason to be afraid of him. The opinion states: "*** Edmonson has compiled a record while in Angola which reasonably demonstrates that he is a dangerous person who is a menace not only to those immediately around him, but to society at large. Stabbings and other acts of violence seem to be commonplace with him." (p.5)

His opinion further states:

"The plaintiff, without doubt, had a genuine fear for his personal safety; that fear was reported by him to several guards and to administrative personnel at Camp H on numerous occasions." (p.5)

"It is no mitigating circumstances to me that he was no worse than many other inmates at Camp H and that worse prisoners than he were confined there in medium security when all the circumstances of the case are taken into account. Nor do I find it mitigating that shakedowns are regularly conducted for search of weapons when it is admitted that they do little good. I do not find it acceptable excuse for not moving plaintiff and his assailant away from each other that there were only 341 single cells in the whole prison and a prison population of some 3,700. The majority has stated: "Bearing on the question of failure to transfer and thus separate the plaintiff

and Edmonson is the nature of those confined to Camp H and the inadequacy of facilities at Angola." (p.9)

"It is unthinkable that the inadequacy of prison facilities and the shortage of personnel could absolve the State from liability of the kind here asserted. The State is responsible for the safety of prisoners, and the highest degree of care is called for when it is taken into consideration the nature of persons so confined and that those so confined are deprived of thsir normal power of self-protection. As custodian of plaintiff's person and responsible for his safety, the plaintiff has shown and the defendant has admitted the inadequacy of its facilities and personnel to fulfill this duty. Accordingly, the failure to provide adequate facilities and personnel to prevent prisoners from obtaining and possessing dangerous weapons or controlling their activities with adequate personnel to prevent injuries such as here sued upon is, in my opinion, actionable negligence, Such a holding would not make the State the insurer of prison inmates but would require it to exercise due care to protect prisoners in its custody from sexual or other physical assaults and especially while sleeping."

"Lastly, I disagree with the majority's having found the plaintiff guilty of contributory negligence because he failed to commit a breach of prison discipline in order to automatically force his removal to a more secure lock-up area. Simply stated, the State, in my opinion, in the instant case failed to use reason-

able care to protect plaintiff from the injuries which he suffered when it had good reason to anticipate and should have anticipated that Edmonson might inflict injury on the plaintiff and having such knowledge failed to take reasonable measures to prevent such injury."

The same overall issues presented to the trial and appellate courts were again presented to the Louisiana Supreme Court. The original Supreme Court decision (see exhibit C) was written by Justice Sanders. Four other justices concurred and two dissented. Applicable excerpt from the original majority opinion are as follows:

Pages 3 & 4 - "Once threatened, the plaintiff reported his fears of bodily harm to his keepers on more than one occasion..... The Court Of Appeal found no actionable negligence on the part of the penal authorities and rejected plaintiff's demands. In this court, plaintiff first contends that LSA-R.S. 15:853 establishes a rule of absolute liability for injuries to prisoners in the custody of the penitentary. That statute provides:

A. The Superintendent shall exercise the following powers.

(1) Subject to the provisions of Subsection B of this section, he shall have general management and control over the convicts committed to the penitentary, their custody, discipline, welfare and safety. He shall make adequate provisions for the segrega-

tion of young short-term first offenders as provided by law."

It is true the statute vests in the Superintendent the general management and control of the prisoners, including power to superintend their custody, discipline, welfare and safety. We fail to detect in the statute, however, any provisions making the Superintendent absolutely liable for personal injuries sustained during the imprisonment. We conclude that such a construction is unwarranted. The applicable rule has been frequently stated. A penal institution is not an insurer of an inmate against attac ks by other inmates. The standard is that or reasonable or ordinary care. The majority rule is that in order to hold the penal authorities liable for an injury inflicted upon an inmate by another inmate, the authorities must know or have reason to anticipate that harm will ensue and fail to use reasonable care in preventing the harm. St. Julian vs State, 98 So.2d 284 (1957), 60 Am.Jur. 2d Penal and Correctional Institutions, #17, P.821 (1972), 72 C.J.S. Prisons, #13, P.866; Annot. Prison Assaults By Prisoners, 41 ALR 3rd 1021, 1028-1029 (1972).

The record in the present case supports a finding that the penal authorities received notice that the plaintiff feared an attack by Edmonson. Such a notice alone, however, is insufficient to support liability under the above rule. Scores of reports of this kind are received weekly in the prison environment. For liability, the law requires at least reason to anticipate harm and

failure to take reasonable action to avert it..... Apart from the periodic search for weapons and routine security, the prison authorities here counselled both prisoners. From the conference, the authorities concluded that no harm was intended. The search for weapons was fruitless..... The second allegation is that the prison failed to provide a security system sufficient to prevent the acquisition or making of the crude knife, the hiding of the weapon and the attack itself. The record reflects that the weapon problem is common to all penal institutions. Despite all reasonable precautions, the acquisition of such weapons cannot be completely prevented."

This opinion is typical of those rendered by the inferior courts. It concludes that the overall penitentary conditions were bad but, because these conditions were common to all penal institutions, the State was not negligent. That is comparable to saying cancer kills human beings but, because it is a menace to society as a whole, nothing will be done to combat this dreaded disease. That analogy is not acceptable today the same as the U. S. Supreme Court did not accept the doctrine of separate but equal school facilities. Furthermore, the analogy used by the Louisiana Supreme Court that stabbings and other assaults are common to all prisons should not be accepted by this court as a method of avoiding the responsibility that is imposed upon a penal institution once it accepts an inmate.

The court further concluded as follows:

Page 7 - "We have examined the numerous assignments of error and find no merit in them. Tragically, plaintiff's injury was the product of an environment in which violent, disturbed and sexually abnormal men are crowded into a single prison unit under conditions that are far less than ideal. As the record shows, no degree of caution can altogether prevent such occurrences. For the reasons assigned, the judgment of the court of appeal is affirmed."

This is the third Louisiana court that did not comment upon the civil rights and other constitutional issues that had been presented to the court for determination.

Justice Tate dissented. He stated as follows:

"I agree with the excellent dissent of Judge Blanche in the Court Of Appeal."

Justice Barham also dissented but did not give written reasons for his dissent.

On March 26, 1973, the Louisiana Supreme Court granted a rehearing in the matter of Parker vs State, et al. Prior to the rehearing argument of Monday, June 11, 1973, two justices who participated in the original Supreme Court decision retired. They were replaced by justices Marcus and Colagero. Justice Marcus wrote the rehearing opinion (see exhibit D) which affirmed the original opinion. He was joined in his majority opinion by

three other justices. Three justices dissented. Justice Dixon who concurred in the original majority opinion joined the two other justices who dissented and the final rehearing judgment was rendered by a four to three majority. Once again the Louisiana Supreme Court failed to comment, discuss and/or apply the constitutional issues that had been presented to the court for determination.

Obviously, the Louisiana Courts ignored the fact that prisoners have certain basic rights which have been defined in various ways. Originally, the attitude of the courts was that the U. S. Constitution afforded the validly incarcerated prisoner no protection whatsoever. Ths classic expression of this concept is found in Ruffin vs Commonwealth, 62 Va. 790 (1876) where it was said that the prisoner was the "Slave Of The State." Although that barbaric notion has long since been discarded in legal rhetoric, the refusal of some courts to deal with prison reform has often made these words true in substance if no longer true in form. The most pervasive principle of prisoner rightd was stated in Coffin vs Reichard, 143 F.2d 443 (1944) wherein the court said:

"The prisoner retains all rights of ordinary citizens except those expressly or by necessary implication taken from him by Law."

Additionally, as if to keep this idea from getting out-of-hand, the court commented further by holding:

"Lawful incarceration may properly operate to deprive the convict of certain rights which would otherwise be his to enjoy." Price vs Johnson, 334 U.S. 266 at 285.

Ir must be rembered that the prisoner does in fact retain basic constitutional rights, U. S. ex rel Yaris vs Shaughnessy 112 F.Supp. 143 (1953) which will be protected despite any doctrine to the contrary when treatment deprives him of those rights. If the courts operate from the assumption that human dignity is a constitutionally protected right (see Brown vs Board Of Education Of Topeka, 347 U. S. 483 - 1954), then there is no reason why this Honorable Court should not grant writs of certiorari to review the overall problem pertaining to prisoner rights. The las has already recognized the attendant helplessness of an inmate to prevent injury from an unlawful act by another inmate. See Restatement Of Torts, Second at page 130. The Restatement Of Torts recognizes that the very act of imprisonment prevents a prisoner from avoiding attacks by fights and, where his custody requires that he be brought into association with persons who are peculiarly likely to do him harm from which he cannot expect to protect himself, the prison authorities should be responsible for any injuries inflicted. In further defining this principle of law, the comments to the Restatement Of Torts reads as follows:

"This is particularly true where the custody not only involves intimate association with persons of notoriously dangerous character, but also deprives the

person in custody of his normal ability to protect himself, as where a prisoner is put in a cell with a man known of violent temper or is required to work or take exercises with a group of notoriously desparate characters. In such case, the fact that the person in custody is a prisoner precludes the possession of any self-defensive weapons and thus makes him incapable of adequately defending himself."

In the case of Holt vs Sarver, 300 F. Supp. 825 (1969) and 309 F.Supp. 362 (1970), the court recognized the danger that lurks in a prison dormitory if and when one inmate wants to attack another. the court also recognized the deadly fueds that arise between inmates and that prison dormitories are frequently scenes of "assaults, fights, stabbings and killings."

Here is an applicable comment from the North Carolina Law Review NO. 4, June of 1970. "If a man is going to be convicted of a crime and stripped of his liberty by society's law, then we must enable him to live in an environment where he can depend on the law to protect him - not in a lawless society where he survives by breaking the law, where the law is fear." Other cases hold that an inmate is a penitentary is entirely dependent upon prison authorities to protect him from reasonable risk of harm. See Hixon vs Cupp, 49 P. 927 (S.Ct.Ok. 1897); Prosser, Law Of Torts, pgs. 183-184, 3 Ed. 1964; Cohen vs U.S.A., 252 F.Supp. 679 (1966) and Landman vs Royster, 333 F. Supp. 621 (1971).

Prosser, Law Of Torts, Third Edition P.183 states as follows: "The amount of care demanded by the standard of reasonable conduct must be in proportion to the apparent risk. As the danger becomes greater, the actor is required to exercise caution consumerate with it."

In applying this proposition of law to the instant case, the State Of Louisiana through its employees and agents knew of the deadly fights, cuttings, stabbings and unlawful attacks by some inmates upon other inmates. In the instant case, all three courts concluded there had been some sort of homosexual affair going on between Parker and Edmonson and homosexuality was the cause for Parker being stabbed by Edmonson. The State Of Louisiana also knew of the helplessness of an inmate to prevent an unlawful attack upon himself because of his inability to flee and also because of his lack of possession of any self-defensive weapons in the face of an attack by another inmate with a weapon. Recognizing the great danger that exists when the actor (The State Of Louisiana) is alerted to the "risk of harm" the exercise of caution requires more than disbelief on its part. In this respect, Prosser further states: "He (the actor) may, furthermore, be engaged in an activity or stand in relation to others which imposes upon him an obligation to investigate and find out so that he becomes liable not so much for being ignorant as for remaining ignorant; and this obligation may require him to know at least enough to conduct an intelligent inquiry as to what he does not know."

Article V, The Bill Of Rights, U. S. Constitution states: "No person shall be deprived of life, liberty or property without due process of law." As was previously mentioned, plaintiff was stabbed on September 15, 1969; he was hospitalized the same day; he was discharged from the penitentary on September 21, 1969 but he was not discharged from the prisoner section of the hospital until November 19, 1969. Consequently, he sustained loss of freedom, false imprisonment and deprivation of civil rights for fifty-eight (58) days. All of this was done without due process of law. According to Article V, incarceration and imprisonment can only be accomplished by due process of law. Therefore, since the plaintiff was falsely imprisoned, the defendants violated his constitutional rights of due process of law and they should be held accountable. This is just one of the many instances in which the Louisiana courts failed to recognize the constitutional issues that had been presented for determination.

Article VIII, The Bill Of Rights, U. S. Constitution States: Nor cruel and unusual punishment inflicted." What actually constitutes cruel and unusual punishment has been nebulous and changing from Weems vs U. S., 217 U.S. 349 (1909) to the recent U. S. Supreme court decision on the death penalty in Furman vs Georgia, 40 U.S.L.W. 4923, June 27, 1972 and the courts seem to have striven without any definite success to come to grips with the actual meaning of the broad language of the Eighth Amendment. Perhaps the only unifying principle of

all the cases is the perception that what is cruel and unusual punishment is defined by the ever shifting and presumably maturing mores of society at any one given period of time. There have been three basic theories or tests that have attempted to make law out of logic. For a long time, the prevalent idea was that before a court may dominate a practice as being cruel and unusual it must first find that the practice is one which "shocks the general conscience or is intolerable in fundamental fairness." Lee vs Tahash, 352 F.2d at 972. Secondly, a punishment may be cruel and unusual if it is greatly disproportionate to the offense for which it is imposed. Weems vs U. S., 217 U.S. 349 and Furman vs Georgia, Supra. Thirdly, it may be cruel and unusual if it unnecessarily violates the purpose for which it is imposed. Robinson vs California, 320 U. S. 660 (1962). The disproportionate test which emerged in Weems was further developed in Trop vs Dulles, 356 U. S. 86 (1958) where the Supreme Court said: "The basic concept underlying the Eighth Amendment is nothing less that the dignity of man..... The amendment must draw its meaning from the evolving standards of decency that marks the progress of maturing society." 356 U. S. at 100-101. In Landman vs Royster, 333 F.Supp. 621 (1971), a vastly significant and most applicable case, Judge Robert Merhige said that any treatment imposed upon an inmate at a state prison would be subjected to the test for cruel and unusual punishment. See Holt vs Sarver, Supra which declared the entire Arkansas penal system cruel and unusual and Hamilton vs

avers that every deploreable condition imaginable existed in Angola Penitentary at the time he was stabbed; that all of these conditions were very clearly brought to the attention of all three Louisiana Courts. In many instances, these courts agreed with plaintiff's allegations. However, the courts concluded he was not entitled to adequate safety because the legislative and executive branches of Louisiana government failed to provide sufficient funds with which to properly administer the penitentary. Petitioner avers the decisions rendered by the three Louisiana courts throughout this proceeding unquestionably denied him the equal protection of the laws to which he is entitled under the fourteenth amendment of the U. S. Constitution. In addition, the Louisiana courts, through the St. Julian precedent (St. Julian vs State) imposed an insurmountable burden of proof upon him because he was a penitentary inmate. Consequently, under Louisiana laws and judicial precedents, it was utterly impossible for him to obtain equal protection of the laws. The events outlined in this proceeding clearly substantiate that assertion and petitioner further avers the St. Julian precedent is unconstitutional because it also violates his rights under the fourteenth amendment of the U. S. Constitution. One of the few things in his favor was La.R.S. 15:853 which specifically made the State Of Louisiana legally responsible for his custody, discipline, welfare and safety but the Louisiana courts ruled the state was not absolutely and/or otherwise responsible for what happened to him. There is no

doubt the State is responsible for his custody. He cannot escape from the penitentary. If he does escape or violate penitentary rules and regulations, he is subject to disciplinary action. There is no doubt the State is responsible for that portion of his welfare in so far as food, shelter, clothing and medical care is concerned but, according to the Louisiana courts, the state is not responsible for his personal safety. Petitioner avers this is the greatest degree of injustice conceived by the minds of men and that these judicial conclusions unquestionably deny him equal protection of the law. For these reasons, petitioner begs this court to carefully review all of the issues that have been raised by this case and grant writs of certiorari so that prisoner rights under the fourteenth amendment as well as other applicable constitutional provisions can be clearly defined.

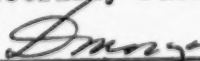
Plaintiff was stabbed on September 15, 1969. Since that date, scores of inmates have been stabbed by other inmates and numerous men have been stabbed to death. During the summer of 1973, three men were stabbed to death within a period of two weeks and another inmate was stabbed to death as late as August of 1973. The Louisiana Department of Corrections and the prison administrators should be ashamed of these accomplishments. All three Louisiana courts attributed these deploreable conditions to the failure of the executive and legislative branches of government to provide adequate funds with which to properly operate the penitentary.

Obviously, the Louisiana courts will not take positive steps to bring about changes of the utmost importance. That is why this particular case is now before the United States Supreme Court so that this court can resolve the many constitutional issues that have been presented for determination.

Conclusion

The Declaration Of Independence of the U. S. Constitution states that all men are created equal; that they are endowed by their creator with certain unalienable rights and that among these are life, liberty and the pursuit of happiness. Petitioner avers that he is an american citizen; that he is endowed by his creator with those same unalienable rights which include life, liberty and the pursuit of happiness; however, all of these rights were denied unto him by the defendants while he was confined to Louisiana State Penitentary at Angola, Louisiana. For these reasons, he begs this Honorable Court to restore those human rights unto him as well as the thousands of other prisoners confined to every penal institution throughout this nation so that the term "all men" will include and not exclude penitentary inmates.

Respectfully Submitted By:



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CERTIFICATE

I, David L. Morgan, Jr., hereby certify that a copy of the above and foregoing Application For Writ Of Certiorari was mailed, postage prepaid, to Attorney S. O. Bardwell, Jr., Counsel for defendants, 902 Republic Tower Building, 5700 Florida Boulevard in Baton Rouge, Louisiana this 26th day of September 1973.

David L. Morgan, Jr.

APPENDIX "A"

George Oscar Parker	NO. 143,418
Vs	Division D
	19th Judicial District Court
State Of Louisiana, Through State Board And/Or Dept. Of Corrections.	Parish Of East Baton Rouge
	State Of Louisiana

George Oscar Parker, hereafter fererred to as plaintiff, has brought this suit against the State of Louisiana, Department of Corrections, for damages he allegedly sustained as a result of a knifing which occurred on or about September 15, 1969 while plaintiff was confined to Louisiana State Penitentary.

Much of the evidence was stipulated to in the Pretrial Order wherein the following facts were admitted.

1. Plaintiff was stabbed on September 15, 1969, while an inmate confined in Section H, Louisiana State Penitentary at Angola, Louisiana.

2. Plaintiff was paroled from the Penitentary on September 21, 1969, by virtue of good time behavoir (Act 426 of 1964).

3. Plaintiff was stabbed while in his bunk asleep at approximately 4:45

o'clock A.M. by inmate Willie Edmonson.

4. The knife used by Edmonson was approximately 16 inches inlength and made within the confines, or homemade within the confines of the penitentary.

5. Prior to being confined to Angola, Plaintiff's last place of employment was Brennan's Restaurant in New Orleans, and he was employed as a busboy at a minimum salary of $1.50 per hour.

6. As a direct result of the stabbing incident of September 15, 1969, plaintiff was hospitalized in Earl K. Long Hospital at Baton Rouge, Louisiana, from 9/15/69 to 11/19/69.

7. Plaintiff is presently and has been since his release from Earl K. Long Hospital the recipient of welfare from the Louisiana Department of Public Welfare in the amount of $66.00 per month, plus Federal food stamps of $24.00 per month, all of which is based upon the Department's computed need of $103.00 per month.

8. As of May 10, 1971, plaintiff is unemployed.

9. Inmate Willie Edmonsom was disciplined on October 9, 1967, for cutting inmate Shelton Batiste.

10. On January 26, 1968, Edmonson was disciplined for hitting inmate Shelton Batiste with a brick.

11. On December 17, 1968, Edmonson was assigned to CBB-LD for administrative investigation involving the cutting of inmate Robert Bradley on December 16, 1968.

12. On September 15, 1969, Edmonson stabbed plaintiff, George O. Parker.

13. Edmonson was disciplined on December 2, 1970, for fighting with inmate Curtis Dandridge. Both inmates had a knife.

14. Homemade weapons are a constant problem because of the shortage of supervision and the open dormitories that the prisoners live in. In spite of constant shakedowns, inmates do manage to fashion weapons from scrap iron and other materials.

15. Inmates are given body searches upon their return to Camp H compound fenced area.

16. Periodic searches of inmates barracks for contrabands or weapons are conducted.

17. Primarily, homosexuals are assigned to Camp H.

Plaintiff was housed at Camp H which is the area most passive homosexuals are quartered. Willie Edmonson and plaintiff had engaged in a homosexual relationship during a prior confinement of

plaintiff to the penitentary. When plaintiff returned to Angola he apparently began a relationship with another inmate. Ill will and bad blood continued between plaintiff and Edmonson for a considerable period of time.

Sgt. Milton Davis testified that plaintiff came to him and asked to be sent to the lock down because he was afraid of Edmonson about a month prior to the stabbing. Thereafter, he called Edmonson into his office and determined that Edmonson was not belligerent and he felt that there was no imminent problem or danger to Parker.

Capt. Couvillion was in charge of Camp H. Plaintiff told him that he had difficulties with Edmonson. He testified that he counselled with inmates over homosexual relationships and resulting triangles almost on a daily basis. He said that jealousy among the inmates was rampant. Couvillion said either Parker or Edmonson had been messing around with someone else and this caused bad blood. He said that the two of them came to him for counselling together and they left as friends.

The stipulations of counsel together with Edmonson's prison file leave no doubt in the Court's mind that he was anything but a model prisoner. He very definitely had the propensity to inflict grave bodily injury on his fellow inmates.

The testimony and prison record file of the plaintiff led the Court to the conclusion that he was anything but a paragon of virtue himself. He had been in-

volved in crimes of violence in the past and he had been in trouble for violence while in Angola.

In addition to being homosexuals, engaged in some sort of relationship between themselves, both Parker and Edmonson were violent men.

In order to find that the State of Louisiana through its Department of Corrections was guilty of negligence in this case plaintiff must satisfy the test laid down in St. Julian vs State of Louisiana, 98 So. 2d 284.

"The general rule gathered from the cases is that in order to hold the State or the employees of the State who have charge of a prison liable for injury to one inmate inflicted by another inmate, there must be knowledge on the part of such officers in charge that such injuries will be inflicted or good reason to anticipate such and following that, there must be showing of negligence on the part of these prison officials in failing to prevent the injury."

From the testimony received in court along with the depositions which were filed in evidence the court must conclude that the plaintiff has failed to show knowledge, actual or constructive, on the part of prison officials that he was about to be seriously injured by Edmonson. As the court appreciated the evidence it felt that the prison officials were entitled to conclude that Parker and Edmonson were engaged in some sort of a lover's quarrel and that

neither inmate was in imminent danger from the other. Capt. Couvillion counseled them and felt that they left his office as friends. Sgt. Davis felt that Edmonson was no threat to Parker. The only evidence to the contrary was the deposition of inmate guard Richard Knox. Knox's deposition commencing on Page 23 thereof indicated that he had personal knowledge of a quarrel between Parker and Edmonson on September 15, just prior to the stabbing. He related that plaintiff came and told him that Edmonson had a knife and that he was going to cut him and; that he (Edmonson) was going to sneak upon Parker and cut him. This statement was made to Knox around 5 o'clock in the evening just before lock-up time. Knox then went to Edmonson and shook him down to try to find the knife but could not find it. He then told Mr. Ducote the officer in charge that Parker had told him that Edmonson was going to sneak up on him and cut him with a knife. Whereupon Ducote went up and shook Edmonson's things down and he couldn't find the knife either.

Edmonson was quartered in the upstairs dormitory and Parker was downstairs in a semi-private cell. At night the door between the upstairs barracks and the downstairs is locked as a security measure to lessen escape possibilities. Plaintiff argued that it was negligence for said door to be left unlocked enabling Edmonson to get from the upstairs to downstairs to stab him. This door was a security door. It was not intended to keep inmates away from each other. The testimony indicated that it was Richard Knox who left the door unlocked that

morning so the upstairs occupants could come downstairs and brush their teeth and then carry their personal objects back upstairs before they began their day's work. It was obvious to the Court that if Knox had felt that Parker was in imminent danger from Edmonson he would not have left the door unlocked on this particular morning. The court felt that all of the officials at Camp H from Captain Couvillion to Knox did not have actual or constructive knowledge that the stabbing would occur. If Knox had actually been worried he would have kept the door locked until such time as sufficient security was present to keep Edmonson away from Parker.

The Court concludes that there was no sufficient evidence presented to the Court that prison officials knew or should have known that Parker was to be stabbed by Edmonson. Accordingly, plaintiff's demands must fall and his suit is dismissed at his cost.

Judgment will be signed accordingly.

June 29, 1971.

/s/ Melvin A. Shortess

APPENDIX B

GEORGE OSCAR PARKER VS STATE OF LOUISIANA, ET AL

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 8765

APPEAL FROM THE 19TH JUDICIAL DISTRICT COURT, EAST BATON ROUGE PARISH, HONORABLE MELVIN A. SHORTESS, JUDGE PRESIDING

BEFORE: BLANCHE, TUCKER AND COLE, JJ

COLE, J.

We here consider an appeal by George Oscar Parker, formerly an inmate at the Louisiana State Penitentary at Angola, who seeks damages for personal injuries sustained in a knifing incident at that institution. Named as defendants are the State of Louisiana through the Department of Corrections and various officials and administrators of that prison and the State of Louisiana.

The occurrence precipitating this action took place on September 15, 1969, while Parker was a medium security prisoner at Camp H of that institution. At approximately 4:45 A.M. on that morning, the plaintiff, while asleep, was attacked by one Willie Edmonson, also known as Willie McCoy, with a knife, some sixteen inches in length. Edmonson, also a medium security prisoner who lived in the

upstairs section of Camp H colored barracks, on that morning came downstairs from his living area through a door to the outside left unlocked by inmate guard Richard Knox for the morning workers, entered the downstairs living area of that same barracks, sought Parker out and stabbed him three times in the mid-section of the body, thus inflicting grave injuries upon him.

By pre-trial order, counsel resolved many of the factual issues ordinarily before the court and they are, as follows:

1. Plaintiff was stabbed on September 15, 1969, while an inmate confined in Section H, Louisiana State Penitentary at Angola, Louisiana.

2. Plaintiff was paroled from the penitentary on September 21, 1969, by virtue of good time behavoir (Act 426 of 1964).

3. Plaintiff was stabbed while in his bunk asleep at approximately 4:45 A.M. by inmate Willie Edmonson.

4. The knife used by Edmonson was approximately sixteen inches in length and made within the confines, or homemade within the confines of the penitentary.

5. Prior to being confined at Angola, plaintiff's last place of employment was Brennan's Restaurant in New Orleans, and he was employed as a busboy at a minimum salary of $1.50 per hour.

6. As a direct result of the stabbing incident of September 15, 1969, plaintiff was hospitalized in Earl K. Long Hospital at Baton Rouge, Louisiana, from 9/15/69 to 11/19/69.

7. Plaintiff is presently and has been since his release from Earl K. Long Hospital the recipient of welfare in the amount of $66.00 per month, plus Federal food stamps of $24.00 per month, all of which is based upon the Department's computed need of $103.00 per month.

8. As of May 10, 1971, plaintiff is unemployed.

9. Inmate Willie Edmonson was disciplined on October 9, 1967 for cutting inmate Shelton Batiste.

10. On January 26, 1968, Edmonson was disciplined for hitting Shelton Batiste with a brick.

11. On December 17, 1968, Edmonson was assigned to CBB-LD for administrative investigation involving the cutting of inmate Robert Bradley on December 16, 1968.

12. On September 15, 1969, Edmonson stabbed plaintiff, George O. Parker.

13. Edmonson was disciplined on December 2, 1970, for fighting with inmate Curtis Dandridge. Both inmates had a kinfe.

14. Homemade weapons are a constant problem because of the shortage of

supervision and the open dormitories that the prisoners live in. In spite of constant shakedowns, inmates do manage to fashion weapons from scrap iron and other materials.

15. Inmates are given body searches upon their return to the Camp H compound fenced area.

16. Periodic searches of inmates' barracks for contraband or weapons are conducted.

17. Primarily, homosexuals are assigned to Camp H.

Parker's action against the various defendants herein is grounded upon their alleged negligence or that of their subordinates in leaving a certain door unlocked at a critical time, in not providing adequate internal security measures to prevent such an incident and in their failure to relocate the plaintiff or to take other precautionary measures to better insure his safety, they having been allegedly put on notice that his life was endangered by Edmonson's presence in close proximity to him.

In addition to the above stipulations, certain other facts seem to be undisputed. Camp H is a custodial area divided into minimum and medium security compounds and they are further divided into caucasian and negroid areas. It is also the area of the prison in which all of the so-called passive homosexuals are confined. On January 23, 1968, Parker was condemned to Angola as a parole violator. He was assigned to Camp H as a medium

security prisoner because he was a homosexual. Edmonson was also an inmate of Camp H with similar tendencies. In the months that followed, a relationship arising out of their propensity for sexual deviation was established between the two. The kinfing incident was directly attributable to some breakdown in this pathetic alliance.

Subsequent to trial on the merits, the district judge rendered judgment rejecting the demands of plaintiff and dismissing his suit. He found that the plaintiff had failed to satisfy the requirements established by this court in St. Julian vs State, 98 So.2d 284 (1st. Cir. 1957), in which this observation was made:

"The general rule fathered from the cases is that in order to hold the State or the employees of a state who have charge of a prison liable for injury to one inmate inflicted by another inmate, there must be knowledge on the part of such officers in charge that such injuries will be inflicted, or good reason to anticipate such, and following that, there must be a showing of negligence on the part of these officials in failing to prevent the injury. Stephens vs conley, 48 Mont. 352, 138 P.189; Kusah vs McCorkle (100 Wash.318), 170 P. 1023 (L.R.A. 1918C, 1158); Ratliff vs Stanley, 224 Ky. 819, 7 S.W. 2d 230 (61 A.L.R. 566); Riggs vs German, 81 Wash. 128, 142 P. 479; Gunther vs Johnson (36 App.Div. 437), 55 N.Y.S. 869."

An examination of that case indicates that a judgment for an inmate's survivor was

rendered where the inmate had been stabbed to death after having been placed in a cell with a prisoner suffering from one of the violent forms of insanity, of which condition the prison officials were aware for some two weeks prior to the killing, and where it was also known by those officials that the existence of dangerous weapons among the inmates was wide-spread. Crucial to a determination of the case at bar is whether the prison officials had good reason to anticipate the injury to Parker, and if they should have anticipated such, were they negligent in preventing it.

From the stipulations of fact alone, we can easily conclude that Parker had good reason to be afraid of Willie Edmonson. Edmonson has compiled a record while in Angola which reasonably demonstrates that he is a dangerous person who is a menace not only to society at large, but to those immediately around him. Stabbings and other acts of violence seem to be commonplace with him. Yet, Associate Warden Hayden Dees testified that he was no worse than many other inmates at Camp H and that worse prisoners than he were confined there in medium security. Warden Murray D. Henderson was asked if, considering his record, Edmonson should have been living in Camp H dormitory with other prisoners on September 15, 1969. He replied (Tr. 197), " I think it was in keeping with the type of prisoner that we had confined to that particular area." Indeed, as stated by Warden Henderson, there are only three hundred and forty-one single cells in the whole prison and a prison population of some thirty-seven hundred, which necessarily

prohibits the use of a single cell for every dangerous man in confinement.

We are also cognizant of the prevalence of weapons among the inmates. Homemade knives and clubs seemingly abound and are constantly being manufactured by the prisoners. Constant inspections or "Shakedowns" are performed by the prison officials, but, by their own testimony, do little good. The record reflects that this is a problem common to all penal institutions. Deputy Warden Lloyd W. Hoyle explained the measures taken in September, 1969, to cope with the problem:

"Well, I can't tell you for sure, but I know that even with the shortage of personnel that we had at that time that a lot of our shift captains volunteered their time and services to shake-down camps and dormitories and every thing else, trying to prevent this type of thing. . . And I've even participated in those myself on nights and weekends to try to help with the problem. . . Anything that's lying loose, or anything that's not bolted down and secured is a possible weapon in a penitentary. . Oh there's millions of ways. I've seen them rub steel on concrete and rocks and everything else. It's, it's a tedious chore, but a tedious chore doesn't bother these men." (Tr. pp.222, 223).

The plaintiff, without doubt, had a genuine fear for his personal safety; that fear was of Willie Edmonson, and it was reported by him to several guards and to administrative personnel at Camp H on numerous occasions. Inmate guard

Richard Knox related that the afternoon before the knifing took place, Parker approached him with the same complaint and requested that he be moved. Knox conducted a "shakedown" of Edmonson's dormitory area without finding a knife. He then reported Parker's complaint to the correctional officer on duty, Richard Ducote, who also conducted a search of Edmonson's area but without success. Sgt. Milton Davis and Captain Albert Couvillion were also aware of Parker's fear of Edmonson. We must conclude, therefore, that the supervisory personnel here involved were on notice that the eventual victim felt that he was in danger and should be moved from the area and that this notice was served upon them on several occasions prior to the occurrence of the injurious event.

However, it is important to distinguish a knowledge on the part of prison officials of Parker's fear of Edmonson from a knowledge on their part, grounded upon reliable facts, that injuries will be inflicted or that there is good reason to anticipate the infliction of injuries. While the former has been established in this case, only the latter is an indispensable element of plaintiff's case which must be established by a preponderance of the evidence before he can recover. The expression of fear must be viewed in the atmosphere in which they were presented before they can be used as a basis of knowledge that harm was imminent. Prisoners afflicted with homosexual tendencies are a constant source of difficulty for prison officials. Their presence among ordinary prisoners is a disruptive influence, to say the

least. They are assigned to one camp to prevent the worsening of a generally tense, overcrowded and unruly situation. These prisoners are, in many instances, emotionally disturbed in addition to their sexual perversion. The record reflects that those in charge of Camp H are confronted, on a daily basis, with petty quarrels, jealousies, trivial bickering and, indeed, reported threats of violence. Rumors run rampant within the confines of the camp and the officials necessarily, in time, become skeptical of each reported possibility of trouble. Most reports received by them of such probable occurrences are unfounded, as indicated by the fact that Camp H had only two stabbings other than this one in all of 1969.

It is quite likely that the best index to understanding the contex of orientation from within which a decision had to be made by prison officials based upon the probability of harm to plaintiff is found in the testimony of Lemuel Rudolph Lockett, an inmate occupying the bunk next to plaintiff and a person alluded to as the third party in a possible love triangle. Lockett knew both Parker and Edmonson well and was perhaps in a better position than anyone to evaluate the possibility of an attack. Certainly, he had access to inside information and was in a better position than a guard or prison officials to know what was about to take place, if anything. Parker confided in Lockett, had repeatedly told him of his fear of Edmonson. Lockett knew of Edmonson's affinity for knives and of his past record of violence. He had been present, according to him, on a

couple of occasions when Edmonson had threatened to stab Parker. Yet, as regards the possibility that Edmonson might actually stab Parker, Lockett deposed: (Plaintiff-12, pp. 10,22,23)

"...I.. you know, like I say, I didn't pay too much mind, wasn't no... you know, I had seen before, you know, 'cause, you know, I seen other incidents similar to it, you know, that ain't never led to nothing as far as serious, you know, I mean anybody getting hurt, you know; but I didn't, you know, give it no thought... I never did imagine it would be as serious as that, you know,, Well, there was some seriousness in the things that were said, you understand, but this is what I'm saying, you understand, I didn't think that it would go as far as it did, like a person might say something, you understand, well, they might be feeling this way at this time,you understand, just through something else causing them to feel that way; but this is just a temporary frame of mind."

The trial court found that the plaintiff failed to show knowledge, actual or constructive, on the part of prison officials that he was about to be seriously injured by Edmonson. We concur. Certainly, the trial court has not committed manifest error. The test of liability involves not knowledge of fear on the part of an inmate but either direct knowledge that injuries will be inflicted, or such knowledge as will give one good reason to anticipate the infliction of injuries. St. Julian vs State, Supra. The trial court properly

applied the test. It must be remembered that Parker, as were all of these men, was a man possessing violent tendencies, as he originally was incarcerated in Angola on a manslaughter charge arising out of the fact that he stabbed to death his male paramour. This man's fear in September 1969, is understandable. His fear does not, however, equate to requisite knowledge on the part of the defendants.

With respect to a showing of negligence on the part of prison officials in failing to prevent the injury, the plaintiff relies basically on the three propositions heretofore briefly mentioned. Firstly, it is asserted that inmate Gordon Knox negligently failed to relock the door which locked in the upstairs prisoners thus preventing Edmonson from having the opportunity to attack Parker while sleeping. Secondly, having knowledge of the alleged trouble between the two, it was negligence not to remove either Parker or Edmonson from Camp H thereby preventing the attack. Thirdly, the defendants, according to plaintiff, did not provide adequate internal security measures. The court will take these matters up in the order recited.

We find, as did the trial judge, that the function of the door was not to keep prisoners away from one another, but was to lessen the opportunity for escape during the nighttime hours (Tr.pp. 322, 323). Knox opened the door for the kitchen personnel and left it open so that they could wash up before the day's work. It is customary for these early risers to return to their living area

upstairs and then descend for their assigned duties. That Edmonson seized upon this particular opportunity to attack does not impute actionable negligence to Knox or his superiors. We are also aware of the cases of Trahan vs State, 158 So.2d 417 (3rd Cir. 1963) and Dauzat v Crites, 237 So.2d 697 (4th Cir. 1970) which stand for the proposition that a master-servant relationship does not exist between an inmate guard or trusty and the state and that the negligence of one in that status is not imputable to the state or its paid officials. We find no need to reach that question here, however, as Knox's actions did not amount to negligent conduct.

A more serious consideration is the failure of defendants to transfer Parker from Camp H at his request (or, alternatively, to remove Edmonson therefrom). It must be remembered that it was the application of foresight, not hindsight, that was called for by the prison officials. The prevailing conditions and environmental factors attendant to decision making have already been set forth by us. It was within that framework that the decision not to transfer was made. Warden Henderson testified (Tr. 209): "Well, I think this has to be a value judgment that the man makes on the job." Considering all circumstances, the decision made in this respect is not tantamount to negligence. A reasonable man at that time and place may well have exercised judgment in the same manner.

Bearing on the question of failure to transfer and thus separate the plaintiff and Edmonson is the nature of those confined to Camp H and the inadequacy of facilities at Angola. Records of several Camp H inmates selected at random were introduced into evidence. They established the validity of the views expressed by Dees and Henderson to the effect that Edmonson and Parker were not unlike the average Camp H domiciliary. The net effect, of course, is that protective physical facilities are grossly inadequate to even begin taking care of the number of persons involved. The record reflects that there is a constant shifting of inmates in an attempt to accommodate the many problems. It appears that the prison officials are making reasonable efforts to advisedly use the facilities that are available to them.

Again we find no negligence on the part of the officials and administrators of the camp or the prison in failing to move Parker at his request. In view of everything perceived, they could reasonably conclude that he was in no imminent danger necessitating such action.

Assuming, argumendo, that negligence should be assigned to those in charge for not transferring plaintiff, we think it is clear that plaintiff would still be unsuccessful in the prosecution of this particular phase of his case, as we find that he would be contributorily negligent under the circumstances prevailing. Sgt. Davis, a Camp H correctional officer at the time of this incident, positively testified that the plaintiff could have forced his own

removal by refusing to go to work or by stepping out of line and refusing to come back into the compound yard at the end of a day's work. Either of these actions would have automatically forced his removal to a more secure lock-up area. Sgt. Davis' testimony also leads to the conclusion that if the plaintiff had really felt that an attack was imminent, some affirmative action or protest on his part could have insured his removal. At page 32o of the transcript, we find this colloquy:

"Q Did Parker ever make such a move in your shift?

A Not that I know of, not when I was on duty.

Q Did he ever make such a refusal to work?

A No, sir.

Q What you're saying, I think is, had he been in fear of his life, he could have taken some steps to get himself out of there?

A He could have."

Not having done so, the plaintiff was guilty of contributory negligence aufficient to bar his recovery herein based on the failure to transfer either he or Edmonson from Camp H. We have considered the argument by plaintiff that affirmative action on his part would have resulted in the loss of "good time." That is somewhat contradicted by the record (Tr.324) but even if such were

true, it is undeniably better to loose "good time" than one's life or suffer serious injuries.

We find no merit in plaintiff's contention that it was actionable negligence for defendants not to provide more adequate internal security measures with which to protect him. Admittedly, there was at the time of this incident inadequate personnel and physical facilities with which to afford inmates of Angola the protection to which they were ideally entitled. The record is more than sufficient to justify that fact. No attempt was made to deny it by anyone who testified.

The thrust of this proposition taken by plaintiff is grounded in socio-economic theory that organized government owes a duty to provide as much money as is necessary to afford prison inmates absoluteprotection to prevent the type of thing that here occurred. However, only reasonable protection must be provided prison inmates and this is necessarily correlated to the availability of public resources. When a law abiding citizen becomes the victim of crime, we would not doubt his lack of a legal cause of action were he to bring suit against the state and its political subdivisions based on alleged negligence in not providing enough police officers to see that each individual is protected at all times. Certainly, no greater duty of care is owed to prison inmates. One must distinguish between protection that is so inadequate as to amount to negligence and the economic inability of the state to provide the ideal penalogical security measures. The latter aspect of the

problem directs itself to our legislative and executive branches of government. As the court observed in Stevens v Stevens, State Department Of Hospitals, 255 So.2d 621 (1971); writ denied, ___La.___, 256 So.2d 618:

"...It is almost common knowledge that our institutions of this nature are not what they ought to be.
"... The purpose of the court is not to evaluate the failure or the alleged failures of the legislative and executive branches of our state government to meet the needs of the people.
"...The court, in this instance, is confined to make a finding as to whether this inadequacy,if it existed, constituted negligence..."

The plaintiff in this case is not unlike Stevens, supra, in urging that liability be assessed, at least in part, upon the inadequacy of personnel and physical facilities which, in turn, is directly attributable to insufficient public support. However, as a part of organized society, the plaintiff bears a share of the blame for contributing to a solution of the problem.

Finally, it may again be noted that an attempt was made to provide the plaintiff with the resources available when he expressed his fear the evening before the stabbing. Both the inmate guard and the correctional officer conducted searches in an attempt to ascertain if Edmonson had a knife or other weapon with which he could attack plaintiff. Their searches were fruitless but they represent a reasonable effort to provide

the plaintiff with protection.

For the assigned reasons, the judgment of the district court is affirmed. Plaintiff-appellant is to pay all costs of these proceedings.

AFFIRMED.

GEORGE O. PARKER

VS

STATE OF LOUISIANA, ET AL

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 8765

BLANCHE, J., DISSENTING

I respectfully dissent.

Both the trial court and the majority have committed manifest error in failing to conclude that plaintiff established constructive knowledge that he was likely to be injured by another inmate as required by St. Julian v State, 98 So. 2d 284 (La.App. 1st Cir. 1957). The majority acknowledges that from the stipulations alone the dangerous propensities of Edmonson were well known and plaintiff had good reason to be afraid of him. The opinion states:

"* * * Edmonson has compiled a record while in Angola which reasonably demonstrates that he is a dangerous person who is a menace not only to society at large, but to those immediately around him. Stabbings and other acts of violence seem to be commonplace with him." (p. 5)

The opinion further states:

"The plaintiff, without doubt, had a genuine fear for his personal safety; that fear was of Willie Edmonson, and it was reported by him to several

guards and to administrative personnel at Camp H on numerous occasions." (p. 5)

It is not mitigating circumstances to me that he was no worse than many other inmates at camp H and that worse prisoners than he were confined there in medium security when all the circumstances of the case are taken into account. Nor do I find it mitigating that shakedowns are regularly conducted for search of weapons when it is admitted that they do little good. I do not find it an acceptable excuse for not moving plaintiff and his assailant away from each other that there were only 341 single cells in the whole prison and a prison population of some 3,700. The majority stated:

"Bearing on the question of failure to transfer and thus separate the plaintiff and Edmonson is the nature of those confined to Camp H and the inadequacy of facilities at Angola." (p. 9)

It is unthinkable that the inadequacy of prison facilities and the shortage of personnel could absolve the state from liability of the kind here asserted. The State is responsible for the safety of prisoners, and the highest degree of care is called for when it is taken into consideration the nature of persons so confined and that those so confined are deprived of their normal power of self-protection. As custodian of plaintiff's person and responsible for his safety, the plaintiff has shown and the defendant had admitted the inadequacy of its facilities and personnel to fulfill this duty. Accordingly, the failure to provide

adequate facilities and personnel to prevent prisoners from obtaining and possessing dangerous weapons or controlling their activities with adequate personnel to prevent injuries such as here sued upon is, in my opinion, actionable negligence. Such a holding would not make the State the insurer of prison inmates but would require it to exercise due care to protect prisoners in its custody from sexual or other physical assaults and especially while sleeping.

Lastly, I disagree with the majority's having found the plaintiff guilty of contributory negligence because he failed to commit a breach of prison discipline in order to automatically force his removal to a more secure lock-up area. Simply stated, the State, in my opinion, in the instant case failed to use reasonable care to protect plaintiff from the injuries which he suffered when it had good reason to anticipate and should have anticipated that Edmonson might inflict injury on the plaintiff and having such knowledge failed to take reasonable measures to prevent such injury.

APPENDIX C

GEORGE O. PARKER NUMBER 52,404

VS

STATE OF LOUISIANA, ET AL SUPREME COURT OF LOUISIANA

ON WRIT OF CERTIORARI, OR REVIEW, TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF EAST BATON ROUGE, LOUISIANA.

SANDERS, Justice.

The plaintiff, Parker, seeks reversal of an adverse judgment rendered by the district court and affirmed by the First Circuit Court of Appeal, denying him recovery for a knife-attack by a fellow prisoner at Louisiana State Penitentary. See La.App., 261 So.2d 364 (1972). We granted certiorari to review the conclusion reached by both courts that the failure of the penal authorities to isolate the plaintiff or otherwise prevent the attack did not warrant recovery under the existing circumstances. 261 La. 824, 261 So. 2d 230 (1972). After review, we affirm.

No major dispute as to the facts. Several important facts have been stipulated; others are reasonably clear from the evidence.

(1) The stipulated facts are as follows:

1. The plaintiff was stabbed on September 15, 1969, while an inmate confined in Section H, Louisiana State Penitentary at Angola, Louisiana.

2. Plaintiff was paroled from the penitentary on September 21, 1969 by virtue of good time behavoir (Act 426 of 1964).

3. Plaintiff was stabbed while in his bunk asleep at approximately 4:45 o'clock A.M. by inmate Willie Edmonson.

4. The knife used by Edmonson was approximately sixteen inches in length and made within the confines, or homemade within the confines of the penitentary.

5. Prior to being confined at Angola, plaintiff's last place of employment was Brennan's Restaurant in New Orleans, and he was employed as a busboy at a minimum salary of $1.50 per hour.

6. As a direct result of the stabbing incident of September 15, 1969, plaintiff was hospitalized in Earl K. Long Hospital at Baton Rouge, Louisiana from 9/15/69 to 11/19/69.

7. Plaintiff is presently and has been since his release from Earl K. Long Hospital the recipient of welfare from the Louisiana Department of Public Welfare in the amount of $66.00 per month, plus Federal food stamps of $24.00 per month, all of which is based upon the Department's

computed need of $103.00 per month.

8. As of May 10, 1971, plaintiff is unemployed.

9. Inmate Willie Edmonson was disciplined on October 9, 1967, for cutting inmate Shelton Batiste.

10. On January 26, 1968, Edmonson was disciplined for hitting Shelton Batiste with a brick.

11. On December 17, 1968, Edmonson was assigned to CBB-LD for administrative investigation involving the cutting of inmate Robert Bradley on December 16, 1968.

12. On September 15, 1969, Edmonson stabbed plaintiff, George O. Parker.

13. Edmonson was disciplined on December 2, 1970, for fighting with inmate Curtis Dandridge. Both inmates had a knife.

14. Homemade weapons are a constant problem because of the shortage of supervision and the open dormitories that the prisoners live in. In spite of constant shakedowns, inmates do manage to fashion weapons from scrap iron and other materials.

15. Inmates are given body searches upon their return to the Camp H compound fenced area.

16. Periodic searches of inmates' barracks for contraband or weapons are conducted.

17. Primarily, homosexuals are assigned to Camp H.

The stipulation and evidence reflect that Parker and Edmonson, his assailant, were classified as homosexuals at the Louisiana State Penitentary. They were assigned to Camp H, used primarily for homosexuals. Both had records of violence; Parker himself was serving a sentence for fatally stabbing a male paramour.

At one time, Parker and Edmonson had a homosexual relation. A third prisoner intervened and disrupted the relationship. Moved by jealousy, Edmonson threatened the plaintiff.

Once threatened, the plaintiff reported his fears of bodily harm to his keepers on more than one occasion. In response to these reports, Captain Couvillion of the penitentary staff summoned both Parker and Edmonson to his office, interrogated and counselled them, and, as the trial court found, "Felt that they left his office as friends." Weapon searches were conducted regularly.

On the night of September 15, 1969, as a protective measure, the penitentary employees searched Edmonson and his dormitory area for weapons out found none. Early the next morning, an inmate guard opened the door leading from the second floor of the dormitory to allow the kitchen personnel to come downstairs to bathe before leaving for work. While the door was open, Edmonson also made his exit; he entered the first floor dormitory, in which plaintiff sletp, and stabbed him with a 16-inch homemade knife,

inflicting serious injuries.

The court of appeal found no actionable negligence on the part of the penal authorities and rejected plaintiff's demands. In this court, plaintiff first contends that LSA-R.S. 15:853 establishes a rule of absolute liability for injuries to prisoners in the custody of the penitentary. That statute provides:

"A. The superintendent shall exercise the following powers.

(1) Subject to the provisions of Subsection B of this Section, he shall have general management and control over the convicts committed to the penitentary, their custody, discipline, welfare and safety. He shall make adequate provision for the segregation of young short-term first offenders as provided by law."

It is true the statute vests in the superintendent the general management and control of the prisoners, including power to superintend their custody, discipline, welfare, and safety. We fail to detect in the statute, however, any provision making the superintendent absolutely liable for personal injuries sustained during imprisonment. We conclude that such a construction is unwarranted.

The applicable rule has been frequently stated. A penal institution is not an insurer of an inmate against attacks by other inmates. The standard is that of reasonable or ordinary care. The majority rule is that in order to hold the penal authorities liable for an injury inflicted upon an inmate by another

inmate, the authorities must know or have reason to anticipate that harm will ensue and fail to use reasonable care in preventing harm. St. Julian v. State, La.App., 98 So.2d 284 (1957); 60 Am.Jur. 2d, Penal and Correctional Institutions, #17, p.821 (1972); 72 C.J.S. Prisons, #13, p.866; Annot., Prison-Assault by Prisoner, el ALR 3rd 1021, 1028-1029 (1972).

The record in the present case supports a finding that the penal authorities received notice that the plaintiff feared an attack from Edmonson. Such a notice, alone however, is insufficient to support liability under the above rule. Scores of reports of this kind are received weekly in the prison environment. For liability, the law requires at least adequate reason to anticipate harm and a failure to take reasonable action to avert it.

Apart from the periodic search for weapons and routine security, the prison authorities here counselled both prisoners. From the conference, the authorities concluded that no harm was intended. The search for weapons was fruitless.

Plaintiff makes three basic charges of negligence. The plaintiff first asserts that Gordon Knox, an inmate guard, failed to keep the doors leading from Edmonson's upstairs dormitory locked. The evidence, however, is quite clear, as found by the lower courts, that the purpose of the door to prevent escape during the night-time to the outside of the dormitory, not to keep the prisoners apart. The door had to be opened for

the early workers to bathe, to return to their quarters, and to leave for their assigned duties. At the beginning of the work day, the movement of prisoners was permissible. The prisoners had access to each other at other times. We conclude that there was no negligence. 2

The second allegation is that the prison failed to provide a security system sufficient to prevent the acquisition or making of the crude knife, the hiding of the weapon, and the attack itself. The record reflects that the weapon problem is common to all penal institutions. Despite all reasonable precautions, the acquisition of such weapons cannot be completely prevented. As Deputy Warden Lloyd W. Hoyle, explained:

"Anything that's laying loose, or anything that's not bolted down and secured is a possible weapon in a penitentary. Oh there's millions of ways. I've seen them rub steel on concrete and rocks and everything else. It's a tedious chore, but a tedious chore doesn't bother these men." (Tr. pp. 222,223).

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2 Because of our conclusion, we do not reach the question of whether the State is liable for the negligence of prison trustees. But see Dauzat v Crites, La.App., 237 So.2d 697 (1970); Trahan v. State, La.App., 158 So.2d 417 (1963).

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The record reflects that the prison employees made periodic searches for weapons and conducted a fruitless search of the assailant's dormitory area that night before the stabbing. To require

more would be tantamount to imposing absolute liability.

The final and more weighty argument is that the prison officials were guilty of negligence in failing to isolate plaintiff or at least place him in separate facilities from Edmonson.

The question is a close one. In essence, however, the plaintiff complains of an error of judgment. The administrative decision against isolation was based upon a satisfactory interview with the prisoners and a fruitless search for weapons. Although by hindsight we now know that the decision was wrong, hindsight is not the test. To the contrary, the decision must be tested by the information, alternative courses of action, and circumstances existing at that time. Testing it on this basis, the trial court found that the failure to isolate did not constitute negligence.

In accepting the trial court's findings, the Court of Appeal stated:

"The expression of fear must be viewed in the atmosphere in which they were presented before they can be used as a basis of knowledge that harm was imminent. Prisoners afflicted with homosexual tendencies are a constant source of difficulty for prison officials. Their presence among ordinary prisoners is a disruptive influence, to say the least. They are assigned to one camp to prevent the worsening of a generally tense, over-crowded and unruly situation. These prisoners are, in many instances, emotionally disturbed in

addition to their sexual perversion. The record reflects that those in charge of Camp H are confronted, on a daily basis, with petty quarrels, jealousies, trivial bickering and, indeed, reported threats of violence. Rumors run rampant within the confines of the camp and the officials necessarily, in time, become skeptical of each reported probability of trouble. Most reports received by them of such probable occurrences are unfounded, as indicated by the fact that Camp H had only two stabbings other than this one in all of 1969."

We find, as did the lower courts, that the steps taken by the authorities which included a conference with the prisoners and a search for weapons, were reasonable under the circumstances. An absolute requirement of isolation or reassignment to avoid liability in such cases would create chaos in prison administration.

We have examined the numerous assignments of error and find no merit in them. Tragically, plaintiff's injury was the product of an environment in which violent, disturbed, and sexually abnormal men are crowded into a single prison unit under which conditions that are far less than ideal. As the record shows, no degree of caution can altogether prevent such occurrences.

For the reasons assigned, the judgment of the Court of Appeal is affirmed.

GEORGE O. PARKER NUMBER 52,404

VS SUPREME COURT OF LOUISIANA

STATE OF LOUISIANA, ET AL

Dissenting Opinion

TATE, Justice.

I agree with the excellent dissent of Judge Blanche in the court of appeal. 261 So.2d 364, 374. As he there stated, 261 So.2d 372:

" It is unthinkable that the inadequacy of prison facilities and the shortage of personnel could absolve the State from liability of the kind here asserted. The State is responsible for the safety of prisoners, and the highest degree of care is called for when it is taken into consideration the nature of persons so confined and that those so confined are deprived of their normal power of self-protection. As custodian of plaintiff's person and responsible for his safety, the plaintiff has shown and the defendant has admitted the inadequacy of its facilities and personnel to fulfill this duty. Accordingly, the failure to provide adequate facilities and personnel to prevent prisoners from obtaining and possessing dangerous weapons or controlling their activities with ade-

quate personnel to prevent injuries such as here sued upon is, in my opinion, actionable negligence. Such a holding would not make the State the insurer of prison inmates but would require it to exercise due care to protect prisoners in its custody from sexual or other physical assaults and especially while sleeping."

I therefore respectfully dissent.

APPENDIX D

SUPREME COURT OF LOUISIANA

NO. 52,404

GEORGE OSCAR PARKER

VS

STATE OF LOUISIANA, ET AL

ON REHEARING

MARCUS, Justice

This is a suit for damages by plaintiff, George Oscar Parker, who seeks recovery for injuries inflicted upon him following a knife attack by a fellow prisoner at the Louisiana State Penitentary at Angola. The plaintiff alleges negligence on the part of the prison authorities in failing to protect him from assaults. Named as defendants are the State of Louisiana through the Department of Corrections and various officials and administrators of that prison and the State of Louisiana. The Court of Appeal concurred in the findings of the trial court that plaintiff failed to show knowledge, actual or constructive, on the part of the prison officials that plaintiff was about to be seriously injured by a fellow inmate. Further, finding no negligence, on the part of the defendants, the Court of Appeal affirmed the dismissal of

plaintiff's suit. 261 So.2d 364. We granted certiorari upon the application of plaintiff. 261 La. 824, 261 So. 2d 230. After hearing this court affirmed. Subsequently, a rehearing was granted. We adhere to the views expressed in our original opinion.

It is undisputed that the knife attack upon Parker occurred on September 15, 1969 at approximately 4:45 A.M. while he was asleep in a portion of the prison known as Camp H and that the attack was made by another inmate, Willie Edmonson, also known as Willie McCoy. He stabbed Parker with a homemade sixteen-inch knife. This resulted in severe injuries to the plaintiff.

The issues involved in this case are whether the prison officials had actual or constructive knowledge that Parker was about to be seriously injured by Edmonson; whether there was reason to anticipate such danger; and, if so, whether the prison authorities were negligent in failing to take steps to prevent the ensuing injury by lack of security measures or in failing to isolate Parker from Edmonson.

Parker contends that he tramsmitted his fear of bodily injury from Edmonson to the prison officials on numerous occasions, even the night before the attack when he contends Edmonson displayed a knife to him and threatened his life. Parker urges that the failure to take precautionary measures to keep Edmonson away from him and to provide for his safety renders the defendant liable under the ruling in St. Julian v. State, 98 So. 2d 284 (La.App. 1957). He addi-

tionally seeks the imposition of absolute liability under R.S. 15:853[1] for injuries to prisoners in the custody of the penitentary.

It is urged by the defendants that there was neither knowledge on the part of the prison officials that Edmonson would inflict bodily harm on Parker nor reason to anticipate such, and that no negligence existed on their part in any respect. They deny that they are absolute insurers, under the law, for the safety of prisoners in their custody at the penitentary.

We stated, on original rehearing, that the stipulation and evidence reflects that Parker and Edmonson were homosexuals and evidence reflects that Parker and Edmonson were homosexuals who were assigned to Camp H, a compound used primarily for homosexuals. Furthermore,

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1. Plaintiff relies upon the provisions of R.S. 1r:853, providing that the superintendent shall exercise general management and control of the prisoners and shall have power to superintend their custody, discipline, welfare and safety.

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the inference is clear from the record that Parker and Edmonson had engaged in abnormal sexual relations with each other.

It is evident that the atmosphere at Camp H was one where there was constant bickering and arguing among the inmates which often resulted in fights and threats of bodily harm against one

another. The prison officials testified that complaints of this nature were routine and constant. While these complaints were often couched in terms of fear of bodily harm, there was generally no basis for these apprehensions. Normally, these complaints were checked out, and meetings set up so that the parties might amicably iron out their differences. There is no doubt that both Parker and Edmonson had made such complaints to prison officials. On two such occasions, Parker made complaints concerning difficulties with Edmonson to Capt. Couvillion and Sgt. Milton Davis. Meetings were arranged with the parties by these officials, who thereafter concluded that the difficulties had been worked out and that there was no danger involved. It is clear that neither of these meetings formed a basis for these officials to anticipate bodily harm in the future to either of these parties.

Much is made of the fact that Edmonson had a record showing vicious propensities, but a sampling of the dossiers of other men in this compound introduced in the trial court indicated that all of these inmates, more or less, have the same or similar records. Consequently, there was no more cause for concern for Parker's safety than for any other prisoner housed in this section of the prison. For that matter, Parker himself was in the penitentary after conviction for manslaughter stemming from the killing by him of his male paramour.

It should be pointed out that numerous homemade knives were constantly discovered by prison officials. In order to

combat this situation, periodic shakedowns were made. Accordingly, when Parker complained to an inmate guard on the night before the attack that Edmonson had displayed to him and threatened him, Edmonson was immediately searched, but no weapon was found.

As observed in our original opinion, the weapon problem is common to all penal institutions. Despite precautionary measures, the acquisition of such weapons cannot always be prevented. Accordingly, we cannot ascribe any negligence on the defendants herein in this regard since they did everything they could reasonably be expected to do under the existing circumstances.

Our primary concern in this case under consideration is whether there was reason for the prison officials to have knowledge that Edmonson would stab Parker and whether they should have anticipated the injury which actually occurred on September 15, 1969. We think not. True, complaint had been made, However, the test is not the mere complaint of such danger. There must be reason to believe that the threatened harm to this prisoner is real and actual and sufficient to place prison officials on notice to act in order to prevent it.

Our conclusion, from a thorough review of the record, is that there was no actual or constructive knowledge on the part of the prison officials that Edmonson would do bodily harm to Parker, nor was there reason to anticipate Edmonson's action. The complaints and fears were not grounded on unusual danger to this

particular prisoner, the fears being those generally voiced and felt by the prison population at large in this particular portion of the prison.

In arriving at these conclusions, we must bear in mind the circumstances involved. We are dealing here with violent, disturbed and sexually abnormal men who are crowded in a confined section of the prison under conditions which are far from ideal. Within this atmosphere, the prison officials must evaluate the constant complaints which are made to them by the prisoners. Specifically, Parker's complaints did not present anything of an unusual nature. This is borne out by the testimony of Edmonson who admitted that, during his arguments with Parker, they would threaten each other, but added that these were just routine among homosexuals. Also, L. R. Lockett, who bunked next to Parker in the dormitory and a person alluded to as the third party in a possible love triangle, admitted knowledge that Edmonson had threatened to stab Parker on a couple of occasions, but said that he did not pay any attention to these threats because they are quite common and never taken seriously. He added that, normally, people do not get hurt. Accordingly, if some of the parties involved considered these threats to be normal and usual under the circumstances, it would certainly be reasonable to conclude that the prison officials should have considered them otherwise.

We cannot judge the actions of prison officials by hindsight. Apparently, their judgments in such mattera have

been quite accurate in the past. The record reveals that there has been only two stabbings at Camp H prior to the one involved in this case. To hold the prison officials negligent, on the few occasions where the complaints developed into reality, would be unjust and harsh and a deviation from the reasonable man test.

Parker further seeks to attribute negligence to defendants for allowing the door to the downstairs portion of this complex to remain open, thus making it possible for Edmonson (who was quartered upstairs) to come down to the room of Parker. It is contended that this door was kept locked and a guard was to be posted at its entrance when it was opened. The inference is that, if the guard had been present when Edmonson came through, instead of in the kitchen drinking coffee, the unfortunate event might have been avoided.

However, the door was always opened at this time of the morning to allow free passage for the inmates to report to work in the kitchen, and it remained open for the remainder of the day until the inspection at night when it was again locked to insure that no prisoner would escape. It mattered not where the guard was at the time Edmonson came down to Parker's quarters, as it is evident from the record that his absence was of no consequence in the happening of the events which followed.

We find no reason, under the facts and circumstances presented, to conclude that plaintiff established negligence on

the part of the defendants.

As in our original opinion, we reject the contention that the defendants are absolute insurere of the safety of every individual confined to a penal institution under the provisions of R.S. 15:853. Nothing in that statute intimates such a postulation.

Absent a finding of actual or constructive knowledge on the part of the prison officials of an unusual danger (apart from the usual fear and complaint so often evidenced by this type of prisoner in this portion of the prison complex), reason to anticipate the danger imparted by such knowledge, and negligence in preventing the injury from this particular danger, recovery cannot be allowed against these defendants. The courts below, as well as this court, properly dismissed plaintiff's suit.

In a somewhat similar factual situation presented in our recent decision in Nedd v. State of Louisiana through Department of Institutions, NO. 52,073, handed down on June 11, 1973, we hdle that the record did not establish a reasonable basis for placing officials on notice that a plaintiff-inmate was in danger fron another inmate; nor did it establish that the State had abrogated the standard of care incumbent upon it for the protection of prisoners in its custody. The record in the instant case warrants the same conclusions.

For the reasons assigned, the judgment on original hearing, which affirmed the judgment of the Court Of Appeal, is

reinstated and made the judgment of this Court. Plaintiff is to pay all costs.